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MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

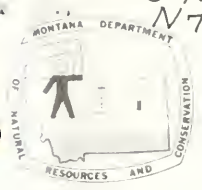
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May 6, 1974

CENTRALIZED SERVICES
DIVISION
RICHARD ISAACS
ADMINISTRATOR



Copies of the proposed rules for implementing the amended Montana Floodway Management and Regulation Act (Section 89-3501 through 89-3515, R. C. M. 1947) and a draft of the Environmental Impact Statement are enclosed for your review and comments.

The proposed rules establish minimum standards for the regulation of floodway and flood fringe areas as required by the 1974 amendments to the law. Minimum standards for regulating floodplains in the absence of detailed floodway delineation information, flood-proofing requirements, and requirements for obtaining permits are also contained in the proposed rules.

Written comments on the proposed rules or the Environmental Impact Statement should be sent to the Floodway Management Bureau, Water Resources Division of the Department by June 6, 1974. A fifteen-day extension for written comments will be given upon request.

In addition, the following four public hearings will be held on the proposed rules:

1. May 20, 1974 at 7:30 p.m. in the Department Auditorium, Natural Resources Building, 32 South Ewing Street, Helena, Montana;
2. May 21, 1974 at 7:30 p.m. in the Evergreen School Gymnasium, Kalispell, Montana;
3. May 28, 1974 at 7:30 p.m. in the City Council Chambers, Missoula, Montana; and
4. May 30, 1974 at 7:30 p.m. in the Gallatin County Courthouse, Bozeman, Montana.

Interested persons may submit comments, either orally or in writing, at any of the hearings.

The enclosed draft Environmental Impact Statement has been prepared in compliance with the Montana Environmental Policy Act, Section 69-6504 (b) (3).

Sincerely,

Richard M. Knudsen
GERHARD M. KNUDSEN

ENVIRONMENTAL COORDINATOR

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
430 East Broadway
Helena, Montana 59601





1. FLOODPLAIN

Rules for implementation of the Montana Floodway Management and Regulation Act (Chapter 55, Section 89, R. C. M., 1973) were prepared by the Department in 1973 and adopted by the Board of Natural Resources and Conservation on September 13 of that year. The rules as finally adopted contained minimum standards for land-use regulation based on a one-zone regulatory approach. Under this one-zone regulatory method, all residential and most commercial structures were prohibited anywhere on the designated or 100-year floodway, which was interpreted to be the entire area that would be inundated by a 100-year frequency flood.

Prior to the formulation and adoption of final rules, the Department had prepared a draft environmental impact statement and proposed rules based on a two-zone or "floodway - flood fringe" regulatory system. Under this two-zone approach, flood fringe flood area is divided into two regulatory zones with different degrees of land-use regulation applied to each, the outer portion of the floodplain, because of lower flood depths and velocities, presents a lesser hazard to human development and, as such, is subject to a lesser degree of restriction. The inner zone, because it poses greater hazard and must convey flood waters downstream, is severely restricted under the two-zone regulatory method.

Comments received on the Department's initial proposed rule were generally critical of the two-zone regulatory approach. The consensus seemed to be that a two-zone regulatory system would be unduly complicated to administer, could actually encourage floodplain development on the outer flood fringe zone, and could be an administrative dilution of legislative intent. Indeed, the Floodway Management and Regulation Act itself requires implementation of a two-zone system. The Board of Natural Resources and Conservation agreed that further work on the rule was required, and the Department accordingly modified the original proposal.

After the final rules were adopted and public hearings were scheduled on completed floodplain delineation studies, a considerable amount of public concern and opposition surfaced, particularly in the urban areas of Evergreen, Deep Lodge and Bozeman. Large numbers of these communities were included in the 100-year floodplains, and the imposition of stringent regulations prohibiting new residential and commercial structures would have had a severe economic impact. In addition, many questions were raised concerning the consistency of the adopted rules since virtually no residential could be made a floodplain area.

DRAWN

CAROL SMITH, CIVIL ENGINEER

ADMINISTRATIVE ACTION - Proposed rules for implementation of the Montana Floodway Management and Regulation Act, Section 89-2-301 through 89-2-315, R. C. M., 1973.

Prepared for the Montana Environmental Policy Act
Section 10-2-301 through 10-2-315, R. C. M., 1973.

Prepared by

WATER RESOURCES DIVISION
MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

BOZEMAN, MONTANA
MAY 1974

Accordingly, a measure was introduced in the 1974 legislature to amend the existing Floodway Management and Regulation Act. This Act, H. B. 924, was passed by both houses and became effective when signed by the Governor on March 21, 1974. Under the present Flood-plan law, the Department is directed to specifically delineate 100-year floodplains and floodways and to apply different standards of land-use regulation to each area. In addition, the new law gives exclusive permit-granting authority to local governments that adopt acceptable Flood-plan land-use regulations, and allows a 180-day appeal period for the adoption of regulations from one year to six months or less.

The changes in the law necessitate changes in the administrative rules for implementation. A draft set of rules has been prepared by the Department and is being circulated with this draft Environmental Impact Statement. As was the case previously, the impact statement prepared by the Department will be reviewed and approved by the regulatory agency. The degree of land-use restriction will largely determine the degree of environmental impact.

The content of the impact statement is little changed from the statement previously written. The only section that differs significantly is the section on alternatives.

II. DESCRIPTION OF PROPOSED ACTION

The Department of Natural Resources and Conservation, Water Resources Division, is responsible under the Montana Floodway Management and Regulation Act for initiating a comprehensive Flood-plan management and regulation program for all State water courses and drainways with drainage areas of greater than 25 square miles.

Implementation of the Floodway Management and Regulation Act requires two separate phases of administrative action:

- (1) Flood-plan lands which are subject to inundation by a 100 year frequency flood must be determined, on a state-wide basis, this will require numerous individual hydrologic and engineering studies.
- (2) Flood-plan lands must be regulated and managed in a manner that will prevent and alleviate flood damages in accordance with the provisions of the Floodway Management and Regulation Act.

Flood-plan delineation studies provide the data necessary for uniform regulation of flood-plan areas within the State. A Flood-plan study, which is a technical data-gathering process that, upon adoption and enforcement of Flood-plan Land-use restrictions by either political subdivisions or the Department, can have a significant, cumulative effect on the existing

physical environment.

Initial responsibility for the regulation of flood-prone land lies with local political subdivisions, and, as amended, the Act gives local subdivisions the authority to regulate flood-plan development through a permit system. In addition, political subdivisions may use existing building regulation, zoning, and subdivision regulation authority to control flood-plan development.

Flood-plan land-use regulations, if enacted and enforced by a local political subdivision, must meet or exceed minimum standards established by the Board of Natural Resources and Conservation. If the local political subdivision fails to adopt suitable Floodway land-use regulations within six (6) months after a Floodplan has been designated by the Board of Natural Resources and Conservation, the designated Floodplan will be enforced by the Department.

The proposed minimum standards are based largely upon those suggested by the United States Water Resources Council (1) and those adopted by other States (2,3) and Federal agencies. (4,5) These standards reflect the difference in flood hazard between the "Floodway" portion of the Floodplain and the "Flood Fringe" portion, as required by law. In addition, the proposed standards contain a set of minimal land-use regulations that must be adopted for designated Flood-plan areas where no detailed flood elevation or Floodway data are available. This will allow local governments on the Department to exercise some degree of control over Flood-plan development. Flood-plan studies, such as hydrologic and engineering studies, become available. Hopefully, such land-use regulations will also allow Montana cities and counties to more readily participate in the new Federal Flood Insurance Program.

1. Regulation of Flood Hazard Areas to Reduce Flood Losses. I Part IV, U.S. Water Resources Council, 1971.
2. Sample Floodplain Zoning Ordinance for Local Units of Government. Minnesota Department of Natural Resources, December 1970.
3. Nebraska's Floodplain Regulation Program, upon action procedures, Pub. No. 501, Nebraska Soil and Water Conservation Commission, May 1970.
4. "Flood Hazard Evaluation Guidelines for Federal Executive Agencies," U. S. Water Resources Council, May 1972.
5. "National Flood Insurance Program," Title 24, Department of Housing and Urban Development, September 1971.

THE FLOODPLAIN PROBLEM

Many Montana communities are now located on or very near flood-prone lands upon which numerous urban floodway encroachments exist. Flood-use restrictions for these areas would at least limit potential flood damages to their present level.

Most of Montana's flood-prone land is presently being used for intensive agricultural purposes, and most headwater streams are used in part for mountainous terrain with only limited development. However, increasing urban-related developments are taking place in such areas. Unless adequate regulations are restrictions in flood-plain development are adopted, the potential for flood damage will obviously increase.

1. FLOODPLAIN PROTECTION EFFORTS

As expressed in the laws, the purposes of the Floodway Management and Regulation Act are:

- (1) restrict or prohibit uses which are dangerous to health, safety, or property in times of flood or use increased flood heights or velocities;
- (2) require that uses vulnerable to floods and flooding public facilities which serve such uses be provided with flood protection at the time of initial construction;
- (3) develop and provide information to identify land which are unsuited for certain development purposes because of flood hazard;
- (4) distinguish between the flood-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;
- (5) apply more restrictive flood-use regulations within the designated floodway; and
- (6) ensure that regulations and minimum standards adopted under this act, apart of possible, balance the general public good with the local private injury.

It is the intent of the regulatory program to achieve these purposes and to ensure that flood-plain developments are controlled and regulated in a manner which would have a direct effect on the physical environment in floodway areas in that low density, open-space uses rather than large scale developments which are concentrated and developed in floodway areas. The floodway would, to a degree, be a transition zone between the floodway and the floodplain, and would be subject to more restrictive flood-use regulations. The floodplain would, to a degree, be subject to less restrictive flood-use regulations. The floodway would be subject to more restrictive flood-use regulations than the floodplain, and the floodplain would be subject to less restrictive flood-use regulations than the floodway.

hazard, development, uses that are prohibited in floodway areas may, however, merely be located in flood fringe areas or other areas with low intensity, open-space use, the end result may be a reduction of development from designated floodways to other unprotected critical areas such as flood fringes, states or unstable slopes, geological fault zones, archeological sites or wildlife water ranges.

Many floodway or floodway developments could be designed to meet the requirements of the act and the proposed rules, and yet create significant adverse environmental impacts. Housing developments in flood fringe areas, for example, although they are constructed to high floodproofing standards, could have a disruptive effect upon flood-plain wildlife and the aesthetic and natural riverine areas.

Where the Department has permit-granting authority in such cases, the Department will comply with all provisions of the Montana Environmental Policy Act in reviewing and acting upon permit applications. Specifically, the Department will prepare an environmental impact statement for each permit application that, if granted, could create significant adverse environmental effects.

V. ALTERNATIVES TO THE PROPOSED ACTION

Section 50-3501, subsections (4) and (5) require that the Department develop rules, and that minimum standards be based on the two-zone regulatory approach, there is no viable alternative to the system of standards advocated in the proposed rules. Individual standards governing specific uses may be changed, and perhaps will, as a result of comment received.

VI. RELATIONSHIP BETWEEN LOCAL, STATE, FEDERAL AND FEDERAL-ASSISTED

The proposed minimum standards and rules are designed to fulfill such purposes of the Act as protecting the short- and long-term health, safety and welfare of man. However, in accomplishing these purposes, they should also create conditions which are favorable to the long-term productivity of the environment. Limiting certain uses within floodways will provide more open space for land-extensive uses. Such uses will tend to sustain a riparian ecosystem within the floodway and, in the long run, help to perpetuate environments critical to many forms of life, including man. In addition, current land uses which are more extensive in nature, like agriculture, and wildlife habitat, will provide a broader array of land-use options for future generations.

VII. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

Since the proposed standards are an administrative tool, the only irretrievable resources directly committed are the time, funds, materials, and energy required to delineate and enforce the designated floodplains. Because a certain degree of development will be allowed in designated floodplains, these lands may be committed to some level of development that may be incompatible with other uses of lands.

VIII. COMMENTS REQUESTED

As a result of numerous previous meetings and correspondence concerning flood-plain management, the Department has prepared a mailing list of over 300 individuals, agencies, and organizations, each of which will be sent copies of the proposed rules and thus environmental impact statement. A copy of this list may be obtained from the Department upon request.

Sub-Chapter 22
Regulation and Enforcement--Permits--
Environmental Impact Statements
Section 36-2.14C(22)-S14010 Local Regulation and Enforcement
Section 36-2.14C(22)-S14020 Department Regulation and Enforcement
Section 36-2.14C(22)-S14030 Permits
Section 36-2.14C(22)-S14040 Environmental Impact Statements

PROPOSED RULES IMPLEMENTING
THE MONTANA FLOODWAY MANAGEMENT AND REGULATION ACT

CHAPTER 14C

Sub-Chapter 1

Definitions

Section 36-2.14C(1)-S1400 Definition of Terms

Sub-Chapter 2

Floodplain and Floodway Delineations

Section 36-2.14C(2)-S1410 Floodplain Delineation

Section 36-2.14C(2)-S1420 Floodway Delineation

Sub-Chapter 6

Minimum Standards--Designated Floodways

Section 36-2.14C(6)-S1430 Uses Allowed Without Permits

Section 36-2.14C(6)-S1440 Uses Requiring Permits

Section 36-2.14C(6)-S1450 Prohibited Uses

Section 36-2.14C(6)-S1460 Flood Control Works--Permits

Sub-Chapter 10

Minimum Standards--Flood Fringe

Section 36-2.14C(10)-S1470 Allowed Uses

Section 36-2.14C(10)-S1480 Prohibited Uses

Sub-Chapter 14

Minimum Standards--Designated Floodplains

Section 36-2.14C(14)-S1490 Standards for Designated Flood-
plains (No Flood Elevation Or
Floodway Data Available)

Sub-Chapter 18

Floodproofing Requirements

Section 36-2.14C(18)-S14000 Floodproofing Requirements

Sub-Chapter 1

Definitions

36-2.14C(1)-S1400. DEFINITION OF TERMS. (1) In addition to the definition of terms contained in Section 89-3503 of the Act, and unless the context requires otherwise, in this chapter:

- (a) "Act" means the Montana Floodway Management and Regulation Act as amended, Title 89, Chapter 37, R.C.M. 1947.
- (b) "Flood fringe" means that portion of a designated floodplain outside the limits of a designated floodway.
- (c) "Channelization project" means the excavation and construction of an artificial channel for purpose of diverting the entire flow of a watercourse or drainway from its established course.
- (d) "Alteration" means any structural change or addition to an artificial obstruction that either increases the size of the obstruction or increases its potential flood hazard. Maintenance of an obstruction is not an alteration. However, the repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the actual cash value of the structure at the (1) before the improvement is started, or (2) if the structure has been damaged and is being restored, before the damage occurred, is an alteration and not maintenance.
- (e) "Riprap" means stone, rock, concrete block, or analogous material that is placed along the banks or bed of a watercourse for the purpose of alleviating erosion.
- (f) "Utility transmission line" means any wire, pipe, or conduit used to transport energy, liquid or materials.
- (g) "Responsible political subdivision" means a political subdivision that has received board approval of its adopted land-use regulation and enforcement procedures in accordance with Section 89-3514 of the Act and Section 36-2.14C(22)-S14010 of these rules.
- (h) "Permit issuing authority" means the responsible political subdivision, if any, or the Department if there is no responsible political subdivision.

Sub-Chapter 2

Floodplain and Floodway Delineations

36-2.14C(2)-S1410. FLOODPLAIN DELINEATION (1) All floodplain delineation studies, reports, and maps used by the Department and used to establish designated floodplains shall be based on the following criteria:
(2) The Department shall, at least three (3) weeks prior to any hearing held for the purpose of establishing a designated floodplain or floodway, furnish the affected political subdivisions a copy of a map showing the proposed designated floodplain or floodway together with a letter

requesting the political subdivisions to furnish any pertinent data on flood hazard. The Department shall also issue news releases at least three (3) weeks prior to any hearing requesting the public to submit any available data concerning flood hazard, flood elevations, or the proposed designated floodplain or floodway boundaries.

(3) Each floodplain delineation study arranged by the Department will, insofar as time and funds permit, include a water surface profile showing the elevation of the flood of one hundred (100) year frequency and a suggested designated floodway. The Department will also utilize flood hazard maps and data provided by the U.S. Department of Housing and Urban Development for the Federal flood insurance program as a basis for establishing the designated floodplain and floodway. Such maps will delineate the boundaries of the flood of one hundred (100) year frequency but will not generally include flood elevations or floodway data. Designated floodplains established for areas where elevations and/or floodways are lacking shall be regulated in accordance with Section 36-2.14C(14)-S1490 of these rules.

36-2.14C(2)-S1420. FLOODWAY DELINEATION (1) The delineation of the designated floodway shall be based on the channel of the watercourse or drainway and those portions of the adjoining floodplain which are reasonably required to carry and discharge the flood of one hundred (100) year frequency without any measurable increase in flood heights. In areas having appreciable urban development or the floodplain, the outer boundary lines of the floodway may generally follow the riverward limits of development provided that:

(a) The calculated elevation of the flood of one hundred (100) year frequency would not be increased more than five-tenths (0.5) foot in any one reach or for the cumulative effect of several reaches of a watercourse as a result of the additional construction of the floodway;

(b) Floodway lines are compatible with local land use plans; and,
(c) The flood fringe does not contain appreciable areas with flood velocities greater than three (3) feet per second or flood depths greater than three (3) feet.

(2) After the delineation of a suggested designated floodway by the Department, and prior to the public hearing to consider the floodway delineations, the Department shall meet with local governmental and planning officials to consider possible adjustments and planning officials to consider adjustments in floodway width or location will be made, however, if such adjustments would increase flood heights beyond the permissible limits noted in subsection (1) of this section.

Sub-Chapter 6

Minimum Standards--Designated Floodways

36-2.14C(6)-S1430 USES ALLOWED WITHOUT PERMITS

- (1) Section 89-3506(2), R.C.M. 1947, specifies that the following open space uses shall be allowed without a permit anywhere within the designated floodway, provided that they are not prohibited by any other ordinance or statute, and provided that they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:
- (a) Agricultural uses;
 - (b) Industrial-commercial uses, such as loading areas, parking areas, and emergency landing strips;
 - (c) Private and public recreational uses, such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails;
 - (d) Forestry, including processing of forest products with portable equipment; and,
 - (e) Residential uses, such as lawns, gardens, parking areas, and play areas.
- (2) In addition to the uses specified in the preceding subsection, the following uses do not, in the judgment of the Board, endanger health or safety or cause increased flood heights, and shall thus be allowed without a permit in the designated floodway:
- (a) Irrigation and livestock supply wells, provided that they are located at least five hundred (500) feet from domestic water supply wells; and,
 - (b) Fences, except permanent fences crossing channels.
- 36-2.14C(6)-S1440 USES REQUIRING PERMITS (1) In addition to the open space uses allowed under the previous section, the following nonconforming uses and artificial obstructions may be permitted within the designated floodway, subject to the issuance of a permit by the permit issuing authority:
- (a) Excavation of material from pits or pools, provided that:
 - (i) a buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;
 - (ii) the excavation meets all applicable regulations of other state agencies; and,
 - (iii) excavated material is stockpiled outside the designated floodway.

- (b) Railroad, highway, and street stream crossings, provided that the crossings are designed to offer minimal obstruction to flood flows.
- (c) Limited filling for highway, street, and railroad embankments not associated with stream crossings, provided that:
 - (i) alternative transportation routes outside the designated floodway are not available; and,
 - (ii) such floodway encroachment is located as far from the stream channel as possible.
- (d) Buried or suspended utility transmission lines, provided that:
 - (i) suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the elevation of the flood of one hundred (100) year frequency;
 - (ii) towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; and,
 - (iii) utility transmission lines carrying toxic or flammable materials are buried to a depth at least twice the calculated maximum depth of scour for a flood of one hundred (100) year frequency. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figure shall be subject to approval by the permit issuing authority.
- (e) Storage of materials and equipment, provided that:
 - (i) the material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or,
 - (ii) the material or equipment is readily removable within the limited time available after flood warning.
- (f) Storage of flammable, toxic, or explosive materials shall not be permitted.
 - (i) Domestic water supply wells, provided that:
 - (i) they are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;
 - (ii) well casings are watertight to a distance of at least twenty-five (25) feet below the ground surface;
 - (iii) water supply and electrical lines have a watertight seal provided where the lines enter the casing; and,
 - (iv) all pumps and electrical lines and equipment are of the submersible type.
 - (g) Buried and sealed vaults for sewage disposal in recreational areas, provided that they meet applicable standards of the Department of Health and Environmental Sciences.
 - (h) Public or private campgrounds, provided that:
 - (i) access roads require only limited fill and do not obstruct or divert flood waters; and,
 - (ii) no dwellings or permanent mobile homes are allowed (camp trailers without wheels or towing vehicles or others not quickly movable are considered permanent mobile homes).

(1) Structures accessory to the uses permitted in this subsection, such as boat docks, marinas, barns, sheds, permanent fences crossing channels, picnic shelters and tables, and toilets, provided that:

(i) the structures are not intended for human habitation;

(ii) the structures will have a low flood damage potential;

(iii) the structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;

(iv) the structures will be constructed and placed so as to offer a minimal obstruction to flood flows;

(v) the structures will be firmly anchored to prevent flotation; and,

(vi) service facilities within these structures, such as electrical, heating, and plumbing facilities, are floodproofed in accordance with Section 36-2.14C(18)-S1400.

(j) All other nonconforming uses or artificial obstructions not specifically listed in this subsection 1973,

(2) As provided the Montana Water Use Act of 1973, Sections 89-880 and 89-892, R.C.M. 1947, all new surface water diversions and changes in place of diversion after July 1, 1973, require permits or approval, respectively, from the Department.

Within designated floodways, the Department shall review each proposed diversion and change in place of diversion to determine if flood flows may be affected. If it appears that a proposed diversion or change in place of diversion may significantly affect flood flows, the Department may require the applicant to provide additional information and to apply for a permit with the permit issuing authority under the Floodway Management and Regulation Act.

A permit under the Floodway Management and Regulation Act shall not be granted if, in the judgment of the permit issuing authority:

(a) The proposed diversion will increase the upstream elevation of the 100-year flood a significant amount (five-tenths [0.5] ft. or as otherwise determined by the permit issuing authority);

(b) The proposed diversion is not designed and constructed to minimize potential erosion from flooding; and

(c) Any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a flood of one hundred (100) year frequency.

(3) In addition to the requirements of the preceding subsections, a new artificial obstruction or conformation use may not be approved under this section if it will significantly increase the upstream elevation of the flood of one hundred (100) year frequency or significantly increase flood velocities.

36-2.14C(6)-S1450 PROHIBITED USES (1) The following artificial obstructions and nonconforming uses are prohibited within the designated floodway:

(a) Structures for human habitation or assembly, including mobile homes without wheels or towing vehicles or otherwise not readily movable;

(b) Commercial buildings (except those noted in subparagraph (1) of subsection (1) of Section 36-2.14C(6)-S1440;

(c) Solid waste disposal; and,

(d) Soil absorption sewage systems.

36-2.14C(6)-S1460 FLOOD CONTROL WORKS--PERMITS (1) Since structural flood control works often significantly obstruct and affect floodway flow capacity, the following flood control measures shall require permits from the permit issuing authority: Flood control levees or dikes if:

(i) the proposed levees or dikes are designed to safely convey a flood of one hundred (100) year frequency with no more than a five-tenths (0.5) foot increase in the 100-year flood elevation at any point on the designated floodway; and,

(ii) the proposed levees or dikes, except those to protect agricultural lands only, are constructed at least three (3) feet higher than the elevation of the flood of one hundred (100) year frequency.

The permit issuing authority may establish either a lower or higher permissible increase in the elevation of the flood of one hundred (100) year frequency for individual levee projects, based on the following criteria:

(i) the estimated cumulative effect of other reasonably anticipated future permissible uses; and

(ii) the type and amount of existing flood prone development in the affected area, if:

(i) the riprap is designed to withstand a flood of one hundred (100) year frequency; not increase the elevation of the flood of one hundred (100) year frequency; and,

(ii) the riprap will not increase erosion upstream, downstream, or across stream from the riprap site.

(c) Channelization projects if they do not significantly increase the magnitude, velocity, or elevation of the flood of one hundred (100) year frequency; downstream from such projects.

(d) dams, provided that:

(i) they are designed and constructed in accordance with approved safety standards; and

(ii) they will not increase flood damages downstream, either through operational procedures or improper hydrologic design.

Minimum Standards--Flood Fringe

36-2.14C(10)-S1470 ALLOWED USES

(1) All uses allowed in the designated floodway without a permit under Section 36-2.14C(6)-S1430 shall also be allowed without a permit in the flood fringe. All uses allowed in the designated floodway subject to the issuance of a permit under Sections 36-2.14C(6)-S1440 and 36-2.14C(6)-S1460 shall also be allowed in the flood fringe subject to the issuance of a permit by the permit issuing authority. In addition, structures, including, but not limited to, residential, commercial, and industrial structures, and fill, shall be allowed by permit within the flood fringe subject to the following:

- (a) Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution;
- (b) Such structures or fill must be compatible with local comprehensive plans, if any;
- (c) Residential structures must be constructed on fill such that the lowest finish-floor elevations (including basement) are two (2) feet or more above the elevation of the flood of one hundred (100) year frequency. The fill shall be at an elevation no lower than elevation of the flood of one hundred (100) year frequency and shall extend for at least fifteen (15) feet at that elevation beyond the structure in all directions. Where existing streets, utilities, or lot dimensions make strict compliance with this provision impossible, the permit issuing authority may authorize through the permit a lesser amount of fill or alternative flood proofing measures. A responsible political subdivision shall notify the Department and receive its approval prior to approving any lesser fill or alternative flood proofing for residential structures;
- (d) Commercial and industrial structures must be either constructed on fill as specified in the preceding subparagraph or be adequately flood proofed up to an elevation no lower than two (2) feet above the elevation of the flood of one hundred (100) year frequency. Flood proofing shall be in accordance with Section 36-2.14C(18)-S14000 and shall further include the following:
 - (i) If the structure is designed to allow internal flooding of the lowest floor, use of the floor shall be limited to such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water. Further, the floors and walls shall be designed and constructed of materials resistant to flooding up to an elevation two (2) or more feet above the elevation of the flood of one hundred (100) year frequency; and,

- (ii) structures whose lowest floors are used for purposes other than parking, loading, or storage of materials resistant to flooding shall be waterproofed up to an elevation no lower than two (2) feet above the elevation of the flood of one hundred (100) year frequency. Waterproofing shall include impermeable membranes or materials for floors and walls, and watertight enclosures for all windows, doors, and other openings. These structures shall be designed to withstand the hydrostatic pressures resulting from a flood of one hundred (100) year frequency.

(c) Roads, streets, highways, and rail lines shall be designed to minimize increases in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facilities shall be located two (2) feet above the elevation of the flood of one hundred (100) year frequency; and,

(f) Public or private structures and facilities for liquid or solid waste treatment and disposal must be flood-proofed to ensure that no pollutants enter flood waters. These facilities must be approved by the Department of Health and Environmental Sciences prior to any approval given by the permit issuing authority.

36-2.14C(10)-S1480 PROHIBITED USES (1) The following artificial obstructions and nonconforming uses are prohibited within the flood fringe:

- (a) Solid waste disposal and soil absorption sewage systems, except as allowed or approved by the Department of Health and Environmental Sciences; and
- (b) Storage of highly toxic, flammable, or explosive materials. Storage of petroleum products may be allowed by permit if buried in tightly sealed and constrained containers, or if stored on compacted fill at least two (2) feet above the elevation of the flood of one hundred (100) year frequency.

Sub-Chapter 14

Minimum Standards--Designated Floodplains

36-2.14C(11)-S1490 STANDARDS FOR DESIGNATED FLOOD-PLAINS (NO FLOOD ELEVATION OR FLOODWAY DATA AVAILABLE)

(1) For those watercourses or drainways in which there is a designated floodplain, but not a designated floodway, or where no flood elevations are available, all uses allowed in a designated floodway under Section 36-2.14C(6)-S1430 without a permit shall also be allowed without a permit in such designated floodplain. All other uses within the designated floodplain shall require permits from the permit issuing authority. The following conditions, insofar as each is applicable, shall be attached to each permit approval:

- (a) Proposed residential structures must be built on compacted fill such that finished first floor elevations are above the highest known historical flood elevation (if available);

(b) Any proposed construction must be designed and constructed to minimize possible flood damage;

(c) Proposed structures must be anchored to prevent flotation or collapse and must be located as far from stream channels as is practicable;

(d) Sanitary sewage systems must be approved by the Department of Health and Environmental Sciences prior to any approval given under these rules.

(2) Where a proposed development within such designated floodplain may significantly increase flood velocities or depths, the permit issuing authority may require a permit applicant to furnish additional hydraulic and survey information before acting upon the permit application. This information may include, but not be limited to, any of the following:

(a) Valley cross sections of the watercourse and adjoining floodplain;

(b) Certification by a qualified professional engineer that floodproofing measures are reasonably adequate to protect against major flood damages; or,

(c) A hydrologic study documenting probable effect on upstream or downstream property owners.

(3) Permits for such proposed developments may be modified or denied if the additional information shows that proposals would increase flood damages to other properties or would cause a threat to the health or safety of its occupants.

Sub-Chapter 18

Floodproofing Requirements

36-2.14C(18)-S14000 FLOODPROOFING REQUIREMENTS

(1) All electrical service materials, equipment, and installation for uses permitted with or without a permit in a designated floodplain or floodway shall conform to the following:

(a) All incoming power service equipment, including metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least two (2) feet above the elevation of the flood of one hundred (100) year frequency;

(b) Portable or movable electrical equipment may be placed below the elevation of the flood of one hundred (100) year frequency, provided that the equipment can be disconnected by a single plug-and-socket assembly of the submersible type;

(c) The main power service shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the designated floodplain and above the elevation of the flood of one hundred (100) year frequency; and,

(d) All electrical wiring systems installed below the elevation of the flood of one hundred (100) year frequency shall be suitable for continuous submergence and may not contain fibrous components.

(2) Heating systems for permitted floodplain and floodway uses shall conform to the following:

(a) Float operated automatic control valves must be installed in supply lines to gas furnaces, so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnaces are located;

(b) Manually operated gate valves that can be operated from a location above the elevation of the flood of one hundred (100) year frequency shall also be provided in gas supply lines; and,

(c) Electric heating systems must be installed in accordance with subsection (1) of this section.

(3) Plumbing systems for Permitted Floodplain and floodway uses shall conform to the following:

(a) Sewer lines, except those to be buried and sealed back up, must have check valves installed to prevent sewage backup into permitted structures;

(b) All toilet stools, sinks, urinals, and drains must be located such that the lowest point of possible water entry is at least two (2) feet above the elevation of the flood of one hundred (100) year frequency.

Sub-Chapter 22

Regulation and Enforcement--Permits-- Environmental Impact Statements

36-2.14C(22)-S14010 LOCAL REGULATION AND ENFORCEMENT

(1) After a floodway or a floodplain has been designated by the Board, the Department shall notify the affected political subdivisions and set forth the date by which the political subdivisions must adopt land-use regulations in accordance with the Act and these rules.

(2) If a political subdivision adopts land-use regulations that equal or exceed the minimum standards contained in sub-chapters 6 through 8 of these rules within the time specified, and if the administrative and enforcement procedures for such regulations meet the requirements of these rules and are approved by the Board in accordance with Section 89-3514 of the Act, no permit will be required from the Department. Copies of all regulations, resolutions, or ordinances proposed to be adopted by a political subdivision to meet the requirements of the Act and these rules shall be sent to the Department for approval by the Board. The Department will notify the political subdivision by letter of Board approval or disapproval.

(3) Land-use regulations adopted by a local political subdivision in conformance with the Act and these rules may include zoning, building codes, and subdivision regulations adopted pursuant to other existing statutory authority, such as Title 11, chapters 27 and 38, and Title 16, Chapters 41 and 47, R.C.M. 1947, as well as permit regulations adopted under the authority given in Sections 89-3506 and 89-3507 of the Act.

(4) Any land-use regulations and procedures adopted to comply with the Act and these rules must include the following:

- (a) Permits must be required prior to the establishment of any new artificial obstruction or nonconforming use requiring a permit under the Act or these rules, or for the alteration of any existing artificial obstruction;
- (b) An official must be hired or appointed with the authority to review permit applications and proposed uses or construction to determine compliance with the Act, these rules, and the regulations adopted by the political subdivision;
- (c) Regulations governing the granting of permits must be at least as stringent as the minimum standards contained in these rules;
- (d) The Department must be notified prior to the approval of any permit application that is in variance with the adopted regulations;
- (e) Copies of all permits granted must be sent to the Department;
- (f) All known property owners within the designated floodplain and designated floodway must be notified by certified mail by the political subdivision that their property is located within the designated floodplain or floodway and is subject to regulation. A list of all property owners so notified shall be sent to the Department;
- (g) A disclosure provision requiring all property owners in a designated floodplain or floodway to notify potential buyers or their agents that such property is located within the designated floodplain or floodway and is subject to regulation.
- (5) Permit regulations may also include the following:
 - (a) Requirements that existing nonconforming uses be inspected and documented to insure future compliance;
 - (b) The imposition of a reasonable fee, not to exceed twenty-five dollars (\$25.00), for the processing of permit applications; and,
 - (c) The appointment or designation of a review board or board of adjustment to hear and decide upon appeals of decisions made by the political subdivision in the administration of the Act and its adopted land-use regulations.

36-2-14C(22)-S14020 DEPARTMENT REGULATION AND ENFORCEMENTS

- (1) If the political subdivision fails to adopt land-use regulations that meet or exceed the minimum standards required by the Act and these rules within the time specified, the minimum standards set forth in the Act and these rules, regulating the designated floodplain or floodway will be enforced by the Department.
- (2) An application to the Department for a permit shall be made on a standard form furnished by the Department (form 650) and shall include all applicable information listed on the form.

(3) The permit to establish or alter artificial obstructions or nonconforming uses, if approved, will be given by the Department on a standard form (form 651).

36-2-14C(22)-S14030 PERMITS (1) Permits shall be granted or denied by the permit issuing authority on the basis of whether the proposed establishment or alteration of an artificial obstruction or nonconforming use meets the minimum standards established by the Board in these rules. Additional factors that shall be considered for every permit application are:

- (a) The danger to life and property from backwater or diverted flow caused by the obstruction;
- (b) The danger that the obstruction will be swept downstream to the injury of others;
- (c) The availability of alternative locations;
- (d) The construction or alteration of the obstruction in such a manner as to lessen the danger;
- (e) The permanence of the obstruction;
- (f) The anticipated development in the foreseeable future of the area which may be affected by the obstruction; and,
- (g) Such other factors as are in harmony with the purposes of the Act and these rules.
- (2) The permit issuing authority may grant a permit for the establishment or alteration of an artificial obstruction or nonconforming use that is not in compliance with the minimum standards contained in these rules if:
 - (a) The proposed use would not increase flood heights or flood hazard either upstream or downstream;
 - (b) Refusal of a permit would, because of exceptional circumstances, cause a unique or undue hardship on the applicant or community involved;
 - (c) The proposed use is adequately floodproofed; and,
 - (d) Alternative locations outside the designated floodway are not available.
- (3) A permit application is considered to have been automatically granted sixty (60) days after receipt of the application, unless the permit issuing authority notifies the applicant before the sixtieth (60th) day that the permit is denied, or unless Section 36-2-14C(22)-S14040 applies.

36-2-14C(22)-S14040 ENVIRONMENTAL IMPACT STATEMENTS

- (1) If, in the case of a permit application to the Department, the Department is of the opinion that a proposed alteration, obstruction or nonconforming use would have a significant impact on the environment, the Department may require the applicant to provide information necessary for the preparation of an Environmental Impact Statement, pursuant to the Montana Environmental Policy Act, Title 69, Chapter 65, R.C.M. 1947.

(2) If an Environmental Impact Statement is required, the Department shall so inform the applicant in writing, indicating the information required for preparation of the Environmental Impact Statement by the Department.

(3) A permit application requiring an Environmental Impact Statement will be specifically approved or denied by the Department only after full compliance with the provisions of the Montana Environmental Policy Act. Normally, the period of time required for review of these permit applications will be from sixty (60) to one hundred twenty (120) days.